
Advice on Powers of Councillors to Pay Pensions to Elected Members

Advice in respect of Powers of Councillors to Pay Pensions to Elected Members

1. Position of Elected Members in Respect of Pensions

- 1.1 In December 2012, the coalition government announced that it intended to end the ability for English Councillors to join the LGPS. In March 2014, the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 were made and laid. This ended the access to the LGPS from 1 April 2014 for both councillors and elected mayors in England and for the Mayor of London and members of the London Assembly.
- 1.2 Any councillor, elected mayor, the Mayor of London and members of the London Assembly who were members of the LGPS on 31 March 2014 were allowed to continue their access to the scheme during their current term of office or until they attained the age of 75, whichever was the sooner.
- 1.3 Under the Pensions Act 2008, we consider that councillors generally, would be excluded from the definition of those entitled to receive pensions, as they are office holders. They are not workers as they do not have a contract of employment nor any other contract by which they undertake to do work or perform services personally for another party to the contract. This means that Councils cannot rely on the general power of competence under the Localism Act 2011 but must rather have a specific power in order to make such a payment.
- 1.4 Councillors in Wales are not affected as their pensions arrangements are under the jurisdiction of the Welsh Assembly Government and therefore their position is unchanged. Councils in Wales.

2. Do councils have an explicit power to pay into a private pension scheme on behalf of its elected members and if so what is that power?

- 2.1 Under section 26 of the Greater London Authority Act 1999, the Authority has the power to make provision for the payment of pensions to the Mayor and Assembly members. This has previously been discharged by permitting the Mayor and Assembly members to be members of the LGPS. This would appear to present an explicit power to make provision for pensions.
- 2.2 Schedule 21(4) Localism Act makes provision for a Mayoral Development Corporation (MDC) to make the following payments:
 - (a) remuneration,
 - (b) travelling and other allowances, and
 - (c) sums by way of, or in respect of, **pensions** and gratuities.
 - (2) The Mayor is to determine rates and eligibility criteria for payments under sub-paragraph (1).
 - (3) If the Mayor thinks that there are special circumstances that make it right to compensate a person on ceasing to be a member of an MDC, the MDC may pay compensation determined by the Mayor.
- 2.3 These cannot be made to a person who is also a member of the London Assembly.

2.4 Councils in Wales retain the power to make payments for members who chose to be members of the LGPS.

3. **Can Councils chose to pay into a pension scheme without an explicit power**

3.1 The general power of competence under S1 Localism Act 2011 does not permit a Council to do anything which it was specifically prohibited from doing prior to the Act, or which has been specifically prohibited after the legislation was passed. The changes to the pensions legislation were explicit and postdate the Act.

3.2 If Council's do chose to make such payments it is likely that they will be acting in a way which is ultra vires.

4. **Auto-enrolment**

4.1 The guidance from Government, which has not been successfully challenged is that councillors are not employed by local authorities, nor are they workers or part-time workers. It has argued that they are volunteers, who are only entitled to expenses. On this basis, Ministers have argued that councillors are not subject to the requirement for auto-enrolment under the Pensions Act 2008.

5. **Member allowances**

5.1 Allowances payable to members of local authorities are as follows:

- basic allowance
- special responsibility allowance
- dependants' carers' allowance
- travelling and subsistence allowance.
- co-opted member allowance.

5.2 Allowances are discretionary and will be subject to the local arrangements set out in a relevant Local Authorities remuneration panel. The panel is likely to exceed its authority if it makes a determination in respect of pensions arrangements, and again such a decision is likely to be unlawful as it will be ultra vires.

6. **Challenge**

6.1 The position of full time Office Holders through the Mayor's office and the London Assembly, and of Police and Crime Commissioners, is distinguished because their roles are full time.

6.2 There is a clear discrepancy between this and the holders of full-time posts in other Local Authorities who are paid special responsibility allowances for full time work. It may be that such a Member could argue that the decision of the government was one which should be subject to challenge. It is unlikely to be appropriate for a local authority to bring such a challenge.